defendant waived the defect by going to trial on the merits. *Ortez* v. *Jewett & Co.*, 23 Ala. 662; *Moore* v. *Watts*, 81 Ala. 261; *Foreman* v. *Weil Bros.*, 98 Ala. 495; *Mitchell & Bro.* v. *Railton*, 45 Mo. App. 273; *Fowler & Wild* v. *Williams*, 62 Mo. 403. A judgment obtained by a partnership in the partnership name is valid. *Ives* v. *Muhlenburg et al.*, 135 Ill. App. 517; *Bennett* v. *Child*, 19 Wis. 362; (*dictum*) *Weldon* v. *Fisher*, 194 Mo. App. 573. *Contra: Hitch* v. *Gray & Co.*, 1 Marv. (Del.) 400; *Simmons et al.* v. *Titche Bros.*, 102 Ala. 317 (judgment by default). Where the defendant is sued in its partnership name and makes no objection, the defect is cured by verdict. *Seitz & Co.* v. *Buffum & Co.*, 14 Pa. St. 69; *Simonton et al.* v. *Rohm et al.*, 14 Col. 51. A judgment against a partnership in its partnership name is valid. In *Heavrin* v. *Lack Malleable Iron Co.*, 153 Ky. 329, the court said: "In such a case partners actually making defense for and on behalf of the partnership, and for and on behalf of themselves in the partnership name, will be treated as the real parties in interest and as the real defendants, and therefore bound by the judgment. Any other rule would make the administration of justice depend not on a fair and impartial trial but on mere tricks and subterfuges." *Contra: Weldon* v. *Fisher, supra; Metropolitan St. Ry. Co.* v. *Adams Express Co.*, 145 Mo. App. 371. The reason for describing a party by name is to identify him. Therefore, where parties without objection allow themselves to be designated by the name of an association, and appear in court under that name, there would seem to be no good reason why the court should not take jurisdiction over them.

RULE IN SHELLEY'S CASE—INTERPRETATION AND CONSTRUCTION OF DEEDS AND WILLS.—S conveyed the tract in question to his wife for life, remainder to his daughters, A and L, and their heirs after them, and in case either or both A and L should die without heirs of their bodies, then the tract to be divided between his son, L C, and his (L C's) heirs, and if only one should die without heirs, her half to be divided between the other and L C's heirs. L died without issue, and L C conveyed to M. In an action to try title between L C's children and M, *held*, that the words "heirs" and "heirs of the body" were used in a non-technical sense to mean children; that the words "either or" in the first condition were used by inadvertence, and thus L C's children were entitled to an undivided half of L's share in the tract. *Shugart* v. *Shugart* (Tex. Civ. App., 1921), 233 S. W. 303.

In a very similar case, the testator, after various specific gifts, left the residue of his real and personal property, comprising the bulk of his estate, to his wife for life, remainder one half to her heirs, or devisees if she should leave a will, and the other half to specified blood relatives of himself. The wife died intestate, and a few days later the testator became *non compos mentis*, remaining so until his death. In a bill praying for construction of the will, *held*, the Rule in Shelley's Case applies to the realty, and the wife would have taken a fee in one half had she lived, but since the devise lapsed the heirs of the testator are entitled thereto. *Belleville Savings Bank* v. *Aneshaensel* (Ill., 1921), 131 N. E. 682.

The Rule in Shelley's Case, that where, in the same instrument, a free-

hold is limited to the ancestor and a remainder to his heirs, the word "heirs" is a word of limitation and not of purchase (1 Co. 104a), is admitted by both the Texas and Illinois courts to be a rule of law and not of construction, and is to be applied, if at all, regardless of the testator's intent. The question in every case is to determine whether "heirs" was used in the technical sense, as referring to those persons entitled under the laws of descent and distribution to the real property of one dying intestate, or is used to denote particular persons or class of persons. If "heirs" is used in the latter sense the rule has no application. *Archer's Case,* 1 Co. 66b; *Van Grutten* v. *Foxwell* (1897), 22 App. Cas. 658; *Stisser* v. *Stisser,* 235 Ill. 207. In the Texas case the court reaches the conclusion that by "heirs" the grantor meant "children" because of the indiscriminate use of "heirs" and "heirs of the body" and the impossibility of giving effect to the provision for dividing the remainder between L C and his heirs. In the Illinois case the court says that the testator meant "blood relatives" of his wife when he said "heirs," and effect is given to his obvious intent as regards the personality, although the court feels bound by the Rule as regards the realty. If it is meant by this that "heirs" was used in the technical sense—the testator supposing that his wife's heirs would be composed of her blood relatives, and not providing for the contingency which actually occurred, viz., his surviving his wife and his incapacity for changing his will thereafter—then the two cases can be distinguished. It is felt, however, that the less conservative Texas court would have given effect to the testator's intent as regards both the realty and the personalty had the facts in the Illinois case been before it.

SPECIFIC PERFORMANCE—"NULL AND VOID" PROVISO CONSTRUED "VOIDABLE" AT VENDEE'S OPTION.—Defendant agreed in writing to sell plaintiff certain real estate. The contract provided that if, for any reason, a good and marketable title could not be given, "this agreement shall be null and void, and the sum paid on account as above provided shall be returned by the party of the first part in lieu of all claims for damages or otherwise." Plaintiff contended that *"null and void"* meant *"voidable"* at the option of the vendee, and insisted upon such performance as defendant could give, though the title was not marketable. *Held,* (one judge dissenting), that defendant must give performance, apparently upon payment of full purchase price without abatement. *Medoff* v. *Vandersaal* (Pa., July, 1921), 114 Atl. 618.

It is significant that the majority opinion was unable to disclose a single case to support its view. The dissenting judge cited three cases supporting the view that the contract was null and void as to both parties if the title was not marketable. In the first of those cases the contract provided that if the title was not marketable the agreement should be "void, and delivered up" and cancelled. The court said: "They might both think it would be equally to their interest that the agreement should be put an end to if the counsel of the purchaser should be of opinion that a marketable title could not be made." *Williams* v. *Edwards* (1827), 2 Simons 79. In the second